

Serial No. 10/631,871

REMARKS

Claims 1-21 are pending herein.

Claims 1-5 and 7-21 are rejected.

Claim 6 is objected to as being dependent upon a rejected base claim and has been amended.

Support for new claim 22 can be found, for example, in original claim 6 and paragraphs [0031] et seq. of the specification, for example. Thus, no new matter is added.

Claims 1-5 and 7-21, 35 U.S.C. 103(a)

Claims 1-5 and 7-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al US 2003/0118664 (Trogolo) in view of McGlothlin et al. US 6,329,444 (McGlothlin) and Umemura et al. US 4,902,503 (Umemura). This rejection and its accompanying remarks are respectfully traversed.

The present invention is directed to medical articles that comprise an antimicrobial region, which antimicrobial region comprises release-modulating *dispersed microparticles* within a latex polymer. The release-modulating microparticles comprise an antimicrobial agent and are adapted to release the antimicrobial agent.

Trogolo teaches microcapsules comprising an antimicrobial agent, typically in the form of a particle or particles encapsulated within a hydrophilic polymer. See Summary of the Invention.

Trogolo teaches a method of preparing an antimicrobial resin by incorporating an antimicrobial microcapsule into a polymer matrix.

Trogolo, however, does not teach latex polymers as either the encapsulating polymers or the matrix polymers. Trogolo actually teaches away from such a process at paragraph [0081], where the advantages of thermal/melt processing are disclosed, which advantages may be considered unique to the process disclosed and essential to the enhanced antimicrobial functioning of the resulting articles. See, e.g., MPEP 2141.02 VI and the cases cited therein.

With respect to present claims 5 and 19, Trogolo does not teach that the compositions are cured.

As indicated in the response to the prior Office Action, Umemura discloses two types of antimicrobial latex compositions. One type contains a homogeneous blend of a natural rubber

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latex or a synthetic polymer latex and protein silver. The first utilizes a latex, e.g., natural rubber latex, and a silver protein complex, protein-silver, *dissolved* in the aqueous phase of the latexes. See the Abstract, column 2, line 60, column 4, lines 45-48, column 4, 54-57 and column 5, lines 54-56. Thus, it is clear from the disclosures referred to that the protein silver is *required* by Umemura to be water soluble. The second type uses a homogeneous blend of a cationic natural or synthetic rubber and soluble silver compounds, e.g., silver nitrate, among others. See, e.g., Abstract and column 4, lines 49-53. As with the protein silver, the water-soluble silver compounds are *dissolved* in the aqueous phase. See, e.g., column 8, lines 41-42. Umemura lacks any teaching of "release-modulating *microparticles* disposed within a latex polymer," as claimed. To the contrary, the antimicrobial compound is *dissolved* in the aqueous phase of the latex. This is a direct teaching away of the present invention. Moreover, because Umemura requires *dissolved* silver compounds, Umemura teaches away from the microcapsules of Trogolo as well.

McGlothlin has been relied on for its disclosure of natural and synthetic rubbers and methods of forming medical articles from these rubbers by dip molding. McGlothlin does not make up for the deficiencies of Trogolo and Umemura noted above.

The Examiner's conclusion that "it would have been obvious to one of ordinary skill in the art" from the teachings of Trogolo "to microencapsulate the antimicrobials found in Umemura," (page 3, Examiner's action), i.e., to combine the teachings, is supported by insufficient explanation based on logic and sound scientific reasoning. *Ex parte Levingood*, 28 U.S.P.Q.2d 1300 (BPAI 1993). The combination ignores the specific requirements of the references as to the form of the antimicrobial (i.e., dissolved formed vs. microcapsule form) and the at least strongly implicit teaching away of Trogolo and of Unemura. Consequently, it is believed the rejection is based only on undue hindsight reconstruction of the references. MPEP 2142, second paragraph, *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1241, 1480-81, 1 U.S.P.Q.2d, 1241, 1246 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987), *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 874, 228 U.S.P.Q. 90-99 (Fed. Cir. 1985)

In view of the differences discussed above, reconsideration of the outstanding rejection is requested.

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Claim 6

Claim 6 is objected to as being dependent upon a rejected base claim. Claim 6 has been amended and is believed to be in condition for allowance.

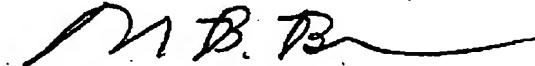
CONCLUSION

Applicant submits Claims 1-21 are in condition for examination and allowance, early notification of which is earnestly solicited. Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone the Applicant's attorney at (703) 433-0510 in order that any outstanding issues be resolved.

FEES

If there are any fees due and owing in respect to this amendment, the Examiner is authorized to charge such fees to deposit account number 50-1047.

Respectfully submitted,

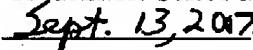


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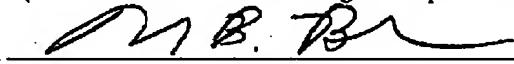
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